

222 DELAWARE AVENUE, SUITE 900
P.O. Box 25130
WILMINGTON, DE 19899
Zip Code For Deliveries: 19801

THE BAYARD FIRM
ATTORNEYS

III MERITAS LAW FIRMS WORLDWIDE

www.bayardfirm.com

302-655-5000
(FAX) 302-658-6395

WRITER'S DIRECT ACCESS

ELECTRONICALLY FILED

(302) 429-4208
rkirk@bayardfirm.com

July 26, 2006

The Honorable Joseph J. Farnan, Jr.
United States District Court
844 North King Street
Wilmington, DE 19801

RE: *LG.Philips LCD Co., Ltd. v. Tatung Company of America, et al.*
C.A. No. 05-292-JJF

Dear Judge Farnan:

I write on behalf of plaintiff LG.Philips LCD Co., Ltd. ("LPL") to respond to Defendants' letters requesting an adverse inference jury instruction.

The Court should deny Defendants' proposed jury instruction because there is no proper basis for the instruction and the instruction would prejudice LPL. LPL should not be penalized for not calling Mr. Jason Cho, Mr. Joo Sup Kim, or Mr. John Kim to testify at trial. Presumably, their testimony would have been cumulative to the testimony of Mr. Ho Lee, who testified at trial regarding yield rate benefits. Further, LPL is operating under the time limits established by the Court and cannot call every person with knowledge as a trial witness.

Defendants' proposed jury instruction, moreover, is inapplicable on its face. The instruction refers to an uncalled witness "who is not equally available to the other party" as a witness. This condition does not apply here. Defendants have designated deposition testimony of both Mr. Cho and Mr. Kim that they would like to offer during trial. Each witness's testimony, therefore, was "equally available" to Defendants in this case, making the proposed instruction improper. Defendants could have asked additional questions at the depositions or designated additional deposition testimony for trial, had they wanted to do so.¹

¹ Defendants never asked John Kim at his deposition, for example, what yield rate increase results from use of the inventions claimed in the '002 Patent. Defendants also did not list any of these LPL witnesses as live witnesses on Defendants' witness list or make any attempt to call these witnesses other than by deposition.

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Indeed, Defendants' proposed instruction ignores that Defendants listed 53 trial witnesses (plus designation of LPL's own trial witnesses) in the proposed Joint Pretrial Order filed on July 5, 2006. The Court sustained LPL's objection to three of those witnesses because they were unfairly offered without prior disclosure. Defendants have failed to call dozens of the witnesses listed in the proposed Pretrial Order. Defendants' proposed adverse inference instruction would apply, if at all, to Defendants' witnesses rather than LPL's witnesses.

Finally, the proposed instruction would prejudice LPL by suggesting that unspecified testimony on unspecified facts should be assumed unfavorable to LPL in unspecified ways. Such an instruction would invite the jury to speculate and make unfair and inaccurate assumptions about unlimited facts and issues. LPL objects to this proposed instruction because it would be prejudicial and improper.

For all of the foregoing reasons, LPL respectfully requests that the Court deny Defendants' requests for an adverse inference jury instruction.

Respectfully submitted,



Richard D. Kirk (#0922)

:rdk

cc: Clerk of the Court
All counsel as shown on attached certificate

CERTIFICATE OF SERVICE

The undersigned counsel certifies that, on July 26, 2006, he electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send automatic notification of the filing to the following:

Robert W. Whetzel, Esq.
Matthew W. King, Esq.
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899

The undersigned counsel further certifies that copies of the foregoing document were sent on July 26, 2006 by email and by hand to the above counsel and by email and first class mail to the following non-registered participants:

Christine A. Dudzik, Esq.
Thomas W. Jenkins, Esq.
Howrey LLP
321 North Clark Street
Suite 3400
Chicago, IL 60610

Teresa M. Corbin, Esq.
Glenn W. Rhodes, Esq.
Julie Gabler, Esq.
Howrey LLP
525 Market Street
Suite 3600
San Francisco, CA 94105

/s/ Richard D. Kirk (rk0922)
Richard D. Kirk